

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TERESA M. RUIZ,)	
)	No. CV-05-3009-CI
Plaintiff,)	
)	ORDER GRANTING IN PART
v.)	PLAINTIFF'S MOTION FOR SUMMARY
)	JUDGMENT AND REMANDING FOR
JO ANNE B. BARNHART,)	ADDITIONAL PROCEEDINGS
Commissioner of Social)	PURSUANT TO SENTENCE FOUR OF
Security,)	42 U.S.C. § 405(G)
)	
Defendant.)	
)	

BEFORE THE COURT are cross-Motions for Summary Judgment (Ct. Rec. 12, 16), submitted for disposition without oral argument on September 6, 2005.¹ Attorney D. James Tree represents Plaintiff; Special Assistant United States Attorney David R. Johnson represents Defendant. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 7.) After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS IN PART** Plaintiff's Motion for Summary Judgment and **REMANDS** for additional proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

¹The court has addressed the matter prior to the formal hearing date because the briefing was complete.

1 Plaintiff, who was 43-years-old at the time of the second
2 administrative decision, filed an application for Supplemental
3 Security Income (SSI) benefits on August 21, 2000, alleging onset as
4 of January 1, 1995, due to panic attacks, anxiety, psychosis,
5 depression and hepatitis C.² (Tr. at 21.) Plaintiff completed the
6 ninth grade and had no past work history. (Tr. at 21.) Following
7 a denial of benefits and reconsideration, a hearing was held before
8 ALJ Verrell Dethloff, who concluded Plaintiff, who was not
9 represented by counsel, could perform the full universe of unskilled
10 work. (Tr. at 370.) The ALJ denied benefits; the Appeals Council
11 remanded for consideration of the testimony of a vocational expert.
12 Following a second administrative hearing, ALJ John Bauer concluded
13 Plaintiff, still appearing without counsel, could perform work as a
14 janitor. (Tr. at 26.) Review was denied by the Appeals Council and
15 this appeal followed. Jurisdiction is appropriate pursuant to 42
16 U.S.C. § 405(g).

17 ADMINISTRATIVE DECISION

18 The ALJ found Plaintiff had not engaged in substantial gainful
19 activity during the time at issue. He also found she had severe
20 mental impairments, including cocaine dependence in one year
21 remission, substance induced dementia, substance induced depression,
22 hearing loss and history of eye surgery, but those impairments did
23 not meet the Listings. (Tr. at 23.) Substance abuse was no longer
24 found to be a material factor in the disability determination. The

25 ²Plaintiff filed an earlier application for SSI benefits on
26 October 16, 1998; that application was denied and no appeal was
27 taken. (Tr. at 60.)
28

1 ALJ found Plaintiff's allegations of disability were not fully
2 credible. He concluded her residual capacity permitted her to
3 perform the full range of exertional work with additional non-
4 exertional limitations. (Tr. at 23.) The ALJ also concluded, based
5 on the testimony of the vocational expert, Plaintiff could work as
6 a janitor / cleaner. Thus, the ALJ found Plaintiff was not
7 disabled.

8 ISSUES

9 The question presented is whether there was substantial
10 evidence to support the ALJ's decision denying benefits and, if so,
11 whether that decision was based on proper legal standards. Plaintiff
12 asserts the ALJ erred when he (1) improperly analyzed the drug and
13 alcohol use, (2) improperly rejected the opinions of Plaintiff's
14 treating and examining physicians, and (3) erroneously found
15 Plaintiff able to work at step five.

16 STANDARD OF REVIEW

17 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the
18 court set out the standard of review:

19 The decision of the Commissioner may be reversed only if
20 it is not supported by substantial evidence or if it is
21 based on legal error. *Tackett v. Apfel*, 180 F.3d 1094,
22 1097 (9th Cir. 1999). Substantial evidence is defined as
23 being more than a mere scintilla, but less than a
24 preponderance. *Id.* at 1098. Put another way, substantial
25 evidence is such relevant evidence as a reasonable mind
26 might accept as adequate to support a conclusion.
27 *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the
28 evidence is susceptible to more than one rational
interpretation, the court may not substitute its judgment
for that of the Commissioner. *Tackett*, 180 F.3d at 1097;
Morgan v. Comm'r of Soc. Sec. Admin. 169 F.3d 595, 599
(9th Cir. 1999).

The ALJ is responsible for determining credibility,
resolving conflicts in medical testimony, and resolving
ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th

1 Cir. 1995). The ALJ's determinations of law are reviewed
 2 *de novo*, although deference is owed to a reasonable
 3 construction of the applicable statutes. *McNatt v. Apfel*,
 4 201 F.3d 1084, 1087 (9th Cir. 2000).

5 SEQUENTIAL PROCESS

6 Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the
 7 requirements necessary to establish disability:

8 Under the Social Security Act, individuals who are
 9 "under a disability" are eligible to receive benefits. 42
 10 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any
 11 medically determinable physical or mental impairment"
 12 which prevents one from engaging "in any substantial
 13 gainful activity" and is expected to result in death or
 14 last "for a continuous period of not less than 12 months."
 15 42 U.S.C. § 423(d)(1)(A). Such an impairment must result
 16 from "anatomical, physiological, or psychological
 17 abnormalities which are demonstrable by medically
 18 acceptable clinical and laboratory diagnostic techniques."
 19 42 U.S.C. § 423(d)(3). The Act also provides that a
 20 claimant will be eligible for benefits only if his
 21 impairments "are of such severity that he is not only
 22 unable to do his previous work but cannot, considering his
 23 age, education and work experience, engage in any other
 24 kind of substantial gainful work which exists in the
 25 national economy" 42 U.S.C. § 423(d)(2)(A). Thus,
 26 the definition of disability consists of both medical and
 27 vocational components.

28 In evaluating whether a claimant suffers from a
 disability, an ALJ must apply a five-step sequential
 inquiry addressing both components of the definition,
 until a question is answered affirmatively or negatively
 in such a way that an ultimate determination can be made.
 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The
 claimant bears the burden of proving that [s]he is
 disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir.
 1999). This requires the presentation of "complete and
 detailed objective medical reports of h[is] condition from
 licensed medical professionals." *Id.* (citing 20 C.F.R. §§
 404.1512(a)-(b), 404.1513(d)).

29 DRUG AND ALCOHOL EVALUATION

30 Plaintiff contends the ALJ improperly conducted an analysis of
 31 the drug and alcohol evidence, noting the ALJ cited the initial
 32 administrative ruling which concluded substance addiction was
 33 material (Tr. at 22) and then found, because Plaintiff was in

1 remission, her substance issues were no longer material. (Tr. at
2 23.) However, Plaintiff argues she continues to suffer the long
3 term psychiatric effects of her drug use (since age 12), including
4 those impairments diagnosed by Dr. Lee after one year of sobriety.
5 Plaintiff also contends the functional limitations arising from
6 those mental impairments, as recognized by Dr. Beaty, were not
7 included in the hypothetical presented to the vocational expert.
8 Defendant responds the ALJ correctly relied on the opinions of
9 consultant Hugh Murray, M.D. who noted on November 6, 2000, that
10 Plaintiff's mental state could not be "teased apart" from her drug
11 and alcohol abuse (Tr. at 306)³ and Ed Beaty, Ph.D.

12 The ALJ made the following findings on this issue after review
13 of Dr. Lee's diagnosis:

14 The additional medical evidence does not substantially
15 affect the previous decision. The claimant is apparently
16 sober, although there are no urinalysis results in the
17 record. She is still having problems keeping appointments.
18 She has apparently improved with therapy. The previous
decision found that substance addiction was material to
the finding of disability. Currently, there is no
evidence that the claimant is still using, so substance
dependence is no longer material, but she has medically

19 ³This evidence is not persuasive; Dr. Murray noted "DA&A cannot
20 be relevant since etiology cannot be teased apart and in any case
21 significant p.d. [personality disorder] is core condition here
22 regardless of abstinence." (Tr. at 306.) Dr. Murray concluded
23 Plaintiff would have mild restrictions of daily living, moderate
24 difficulties in maintaining social functioning, moderate
25 difficulties in maintaining concentration, persistence or pace, and
26 insufficient evidence of repeated episodes of decompensation. (Tr.
27 at 302.)
28

1 improved with sobriety as was opined in the previous
2 decision...

3 The medical evidence indicates that the claimant has
4 cocaine dependence, in one year remission, substance
5 induced dementia, substance induced depression, hearing
6 loss, and a history of eye surgery, impairments that are
7 "severe" with the meaning of the Regulations...

8 ...Without considering her drug addiction, she is capable
9 of carrying out one and two step instructions, and can
10 perform repetitive tasks at a moderate pace in a
11 structured, predictable setting, in work not requiring
12 more than superficial interaction with the general public.

13 (Tr. at 22, 23.) It appears the ALJ's diagnostic findings are based
14 on Dr. Jay M. Toews' assessment dated May 4, 2001. (Tr. at 315.)
15 Dr. Toews diagnosed cocaine dependence, episodic; substance induced
16 dementia; substance induced depression - severe; substance induced
17 anxiety; rule out withdrawal symptoms; PTSD by history; personality
18 disorder nos, antisocial, borderline, histrionic and narcissistic.
19 Plaintiff had been last treated for substance abuse in February 2001
20 but had checked herself out of the program and reportedly had last
21 used cocaine in February or March 2001. (Tr. at 316.) Dr. Toews
22 further noted: "One cannot be confident that Teresa is not using
23 drugs...[on a] regular basis. She will probably need to be
24 involuntarily detained for a period of time for successful treatment
25 of substance abuse." (Tr. at 317.)

26 Based on this evaluation, Dr. Beaty concluded, in the absence
27 of substance abuse, Plaintiff would be moderately limited in
28 understanding and remembering detailed instructions, carrying out
detailed instructions, maintaining attention and concentration;
performing activities within a schedule; completing a normal workday
and week without interruption from psychologically based symptoms;
interacting appropriately with the general public, responding

1 appropriately to changes in the work setting and setting realistic
2 goals or making plans independently of others. (Tr. at 318, 319.)⁴
3 Dr. Beaty also found Plaintiff, again in the absence of
4 polysubstance abuse, could carry out one and two step instructions,
5 perform repetitive tasks at a moderate pace, would have difficulty
6 adopting to changes in the workplace, and would require structure
7 and supportive supervision. Finally, Dr. Beaty concluded Plaintiff
8 would work best with limited superficial interaction with the
9 general public. (Tr. at 319.) These functional limitations, as
10 stated in the positive, were adopted by the ALJ. (Tr. at 25.) Based
11 on the limitations, the vocational expert concluded Plaintiff could
12 work as a janitor / cleaner. (Tr. at 499.)

13 The ALJ did not discuss Dr. Lee's conclusions (Tr. at 463)

14
15 ⁴Plaintiff submitted evidence to the Appeals Council from a
16 non-testifying vocational expert that limitations as to the ability
17 to understand, remember and carry out simple instructions would
18 preclude gainful employment. (Tr. at 468.) However, those
19 limitations are not included in Dr. Beaty's assessment. (Tr. at
20 318.) Additionally, the expert noted moderate limitation in ability
21 to make simple work related decisions would preclude employment; but
22 Dr. Beaty assessed only a mild limitation in this area. (Tr. at
23 318.) Moderate limitations in numbers seven and 11, as noted by Dr.
24 Beaty (Tr. at 318, 319), would preclude gainful employment except
25 for a sheltered work environment. (Tr. at 469.) Finally, the
26 expert noted five moderate limitations in any of the areas would
27 preclude employment. (Tr. at 469.) Plaintiff was found to be
28 moderately limited in eight areas. (Tr. at 318, 319.)

1 except to dismiss them with the general statement "The additional
2 medical evidence does not substantially affect the previous
3 decision." (Tr. at 22.) However, the previous decision was
4 completed prior to Plaintiff's year of sobriety. Here, the ALJ
5 found substance abuse was not a material factor in his disability
6 determination. (Tr. at 23.) Thus, it was internally inconsistent
7 to rely on an examination conducted during a period of abuse and one
8 which produced diagnoses which were "substance induced."

9 Dr. Lee's examination occurred about one year into sustained
10 sobriety. He affirmed diagnoses of bipolar disorder, polysubstance
11 abuse in remission, and PTSD. (Tr. at 463.) He noted Plaintiff was
12 attending two AA meetings per week as well as outpatient treatment
13 and additional meetings during the week with a sponsor. Medications
14 included Lexapro (for depression and generalized anxiety disorder),
15 Neurontin (for anxiety), and Seroquel (for sleep). Dr. Lee's
16 assessment, however, was not supported by independent testing.
17 Moreover, the ALJ did not consider the limitations suggested by the
18 outpatient services or side effects of the medications.

19 Plaintiff was not represented by counsel at either
20 administrative hearing. There are questions that remain regarding
21 Plaintiff's mental status post sobriety. "[T]he ALJ has a duty to
22 assist in developing the record." *Armstrong v. Commissioner of Soc.*
23 *Sec. Admin.*, 160 F.3d 587, 589 (9th Cir. 1998); 20 C.F.R. §§
24 404.1512(d)-(f); *id.* at §§ 416.912(d)-(f); see also *Sims v. Apfel*,
25 530 U.S. 103, 110-11 (2000) ("Social Security proceedings are
26 inquisitorial rather than adversarial. It is the ALJ's duty to
27 investigate the facts and develop the arguments both for and against

granting benefits...."). An ALJ may supplement an inadequate medical record by ordering a consultative examination, i.e., "a physical or mental examination or test purchased for [a claimant] at [the Social Security Administration's] request and expense." 20 C.F.R. §§ 404.1519, 416.919. The ALJ's duty to develop the record fully is heightened when the claimant is unrepresented, may be mentally ill and thus unable to protect his or her own interests. *Higbee v. Sullivan*, 975 F.2d 558, 562 (9th Cir. 1992). Some kinds of cases "normally require a consultative examination," including those in which "additional evidence needed is not contained in the records of [the claimant's] medical sources," and those involving an "ambiguity or insufficiency in the evidence [that] must be resolved." §§ 404.1519a(b)(1), (4), 416.919a(b)(1), (4). Here, the record reflects an incomplete mental health record; accordingly,

IT IS ORDERED:

1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 12**) is **GRANTED IN PART**; the matter is **REMANDED** for additional proceedings pursuant to sentence four of 42 U.S.C. § 405(g), including a comprehensive mental health examination unless there is evidence Plaintiff has been unable to sustain her sobriety. If such evidence is offered and credited, then the current application for benefits may be **DISMISSED WITH PREJUDICE** without additional administrative proceedings. Any award of benefits would also be dependent upon amendment of the onset date.

2. Defendant's Motion for Summary Judgment dismissal (**Ct. Rec. 16**) is **DENIED**.

3. The District Court Executive is directed to file this Order

1 and provide a copy to counsel for Plaintiff and Defendant. The file
2 shall be **CLOSED** and judgment entered for Plaintiff.

3 DATED August 30, 2005.

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5
6 s/ CYNTHIA IMBROGNO
7 UNITED STATES MAGISTRATE JUDGE
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